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BUTCH TONGATE
Cabinet Secretary

J. C. BORREGO
Deputy Secretary

Original via UPS -- Copy via Electronic Mail

September 15, 2017

Mr. William K. Honker, Director
Water Quality Protection Division (6WQ)
U. S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Re: State Certification

Dear Mr. Honker:

Enclosed, please find the state certification for the following proposed National Pollutant Elimination System (NPDES) permit:

New Mexico Department Game & Fish - Red River State Fish Hatchery - NM0030147

If any, comments and conditions are enclosed on separate sheets.

U.S. Environmental Protection Agency (USEPA) proposes to regulate discharges under the above-referenced NPDES Individual Permit. A state Water Quality Certification is required by the federal Clean Water Act (CWA) §401 to ensure that the action is consistent state law [New Mexico Water Quality Act, §§ 74-6-1 through 74-6-17, New Mexico Statutes Annotated (NMSA) 1978]; and complies with applicable state Water Quality Standards [*Standards for Interstate and Intrastate Surface Waters*, New Mexico Water Quality Control Commission, 20.6.4 New Mexico Administrative Code (NMAC), including the antidegradation policy; and the statewide Water Quality Management Plan and Continuing Planning Process, including Total Maximum Daily Loads.

Pursuant to state regulations for permit certification in 20.6.2.2001 NMAC, USEPA jointly with NMED posted a public notice dated July 29, 2017 of the draft permit announcing the beginning of a public comment period. NMED posted notice on the Department's website at <https://www.env.nm.gov/surface-water-quality/public-notices>. NMED accepted submitted written comments from the applicant on the draft permit during the at least 30-day comment period. NMED considered all pertinent comments. NMED will send a copy of this conditional final permit certification to the applicant.

Sincerely,

/s/Shelly Lemon

Shelly Lemon
Bureau Chief
Surface Water Quality Bureau

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New Mexico Department Game & Fish - Red River State Fish Hatchery - NM0030147

cc: (w/enclosures)

- Ms. Evelyn Rosborough, USEPA (6WQ-PO) via e-mail
- Mr. Brent Larsen, USEPA (6WQ-PP) via e-mail
- Mr. Michael Sloane, Division Chief, Fisheries Division, NMDGF via Certified Mail
(7005 1820 0001 5708 0952)

Mr. Sam Coleman, Acting Regional Administrator
Environmental Protection Agency
1445 Ross Avenue
Dallas, TX 75202-2733

September 15, 2017

STATE CERTIFICATION

RE: New Mexico Department Game & Fish - Red River State Fish Hatchery - NM0030147

Dear Mr. Coleman:

The New Mexico Environment Department (Department) has examined the application and proposed National Pollutant Discharge Elimination System (NPDES) permit above. The following conditions are necessary to assure compliance with the applicable provisions of the Clean Water Act Sections 208(e), 301, 302, 303, 306, and 307 and appropriate requirements of State law.

Compliance with the terms and conditions of the permit and this certification will provide reasonable assurance that the permitted activities will be conducted in a manner which will not violate applicable water quality standards and statewide water quality management plan and will be in compliance with the antidegradation policy.

The State of New Mexico

- ☐ certifies that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law
- ☒ certifies that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law upon inclusion of the following conditions in the permit (**see attachments**)
- ☐ denies certification for the reasons stated in the attachment
- ☐ waives its right to certify

In order to meet the requirements of State law, including water quality standards and appropriate basin plan as may be amended by the statewide water quality management plan, each of the conditions cited in the draft permit unless otherwise indicated (**see attachments**), and the State certification shall not be made less stringent.

The Department reserves the right to amend or revoke this certification if such action is necessary to ensure compliance with the State's water quality standards and statewide water quality management plan.

Please contact Sarah Holcomb at (505) 827-2798 if you have any questions concerning this certification.

Conditions and comments pertaining to this draft permit are attached.

Sincerely,

/s/Shelly Lemon

Shelly Lemon
Bureau Chief
Surface Water Quality Bureau

New Mexico Department Game & Fish - Red River State Fish Hatchery - NM0030147
State Certification of the Proposed NPDES Draft Permit
September 15, 2017

CONDITIONS OF CERTIFICATION

The following revisions to the Draft Permit are necessary to ensure that discharges allowed under the National Pollutant Discharge Elimination System (NPDES) permit protect State of New Mexico water quality standards adopted in accordance with §303 of the Clean Water Act (CWA) and the New Mexico Water Quality Act [Chapter 74, Article 6 New Mexico Statutes Annotated (NMSA) 1978]. State water quality standards are published in the document entitled Standards for Interstate and Intrastate Surface Waters, New Mexico Water Quality Control Commission (WQCC), 20.6.4 New Mexico Administrative Code (NMAC) approved by United States Environmental Protection Agency (USEPA) as amended through August 11, 2017 (WQS).

USEPA regulations at 40 CFR § 122.4 4(d)(1)(i) require that permit

[l]imitations must control all pollutants or pollutant parameters...which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard....

NPDES Regulations at 40 CFR § 124.53(e) require that State certification shall include:

(1) Conditions which are necessary to assure compliance with the applicable provisions of CWA sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law;

(2) ...any conditions more stringent than those in the draft permit which the State finds necessary to meet the requirements listed in paragraph (e)(1) of this section. For each more stringent condition, the certifying State agency shall cite the CWA or State law references upon which that condition is based...

(3) A statement of the extent to which each condition of the draft permit can be made less stringent without violating the requirements of State law, including water quality standards...

NMED is providing certification consistent with 40 CFR 124.53(e)(2) for Condition 2 and 40 CFR 124.53(e)(3) for Condition 1 (see below). A statement of the extent to which the condition of the Draft Permit can be made less stringent consistent with 40 CFR 124.53(e)(3) is provided below in Condition 1. These conditions are consistent with and will not violate the requirements of the New Mexico state water quality standards.

Justification for the Conditions

The permit authorizes discharges to Red River (receiving water) in classified segment 20.6.4.122 NMAC in the Rio Grande Basin. State WQS 20.6.4.122 NMAC states:

A. Designated Uses: coldwater aquatic life, fish culture, irrigation, livestock watering, wildlife habitat and primary contact.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses....

State WQS 20.6.4.11.B NMAC (Applicability of Water Quality Standards) states:

...The critical low flow of a stream at a particular site shall be used in developing point source discharge permit requirements to meet numeric criteria set in ...20.6.4.900 NMAC...(2) ...the critical low flow is the minimum average four consecutive day flow that occurs with a frequency of once in three years (4Q3).

State WQS 20.6.4.11.E (2) NMAC (Applicability of Water Quality Standards) states:

The acute aquatic life criteria, as set out in ...Subsection J ...of 20.6.4.900 NMAC, shall be attained at the point of discharge for any discharge to a surface water of the state with a designated aquatic life use.

State WQS 20.6.4.900.J (1) NMAC use-specific numeric criteria for Total Residual Chlorine (TRC) in micrograms per liter or µg/L are:

<u>Designated Use</u>	<u>Numeric Criteria</u>
Wildlife Habitat	11 µg/L
Acute Aquatic Life	19 µg/L
Chronic Aquatic Life	11 µg/L

NPDES regulations at 40 CFR 122.44(d)(1)(i) require that permit

[l]imitations must control all pollutants or pollutant parameters...which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard...

The following conditional certification includes references to Procedures for Implementing NPDES Permits in New Mexico or “NMIP.” State of New Mexico, Statewide Water Quality Management Plan and Continuing Planning Process (WQMP), approved by the WQCC on May 10, 2011 and USEPA on December 23, 2011 states, among other things, “as the current NPDES permitting authority for NM, EPA Region 6 develops effluent limitations and schedules of compliance in accordance with its Procedures for Implementing NPDES Permits in New Mexico, which is based on applicable federal regulations and guidance.” The current version of the NMIP prepared by USEPA Region 6 Permits Branch in consultation with the NMED Surface Water Quality Bureau (SWQB) is dated March 15, 2012.

Conditions 1 and 2 are based on information and requests in State of New Mexico Department of Game & Fish (NMDG&F) comment letter received by NMED and USEPA by e-mail correspondence on August 25, 2017. Additional information is provided in Comment 4 below.

Condition 1

USEPA may remove the condition in Part II.C (Chlorine) of the Draft Permit that states “There shall be no discharge of chlorine for any outfall” to the extent as follows:

- a) USEPA must add monitoring and reporting requirements for TRC to Part I.A of the Final Permit; and
- b) USEPA must retain the Permit Modification and Reopener conditions in Part II.A of the Final Permit.

Monitoring and reporting with the permit modification and reopener conditions is required to ensure the protection of designated uses in State WQS 20.6.4.122 NMAC and that applicable numeric criteria in State WQS in 20.6.4.900.J (1) NMAC for Total Residual Chlorine are not violated. Excerpts for NMWQS citations were provided above.

Condition 2

If USEPA includes an effluent limitation for TRC in Part I.A of the Final Permit then the concentration must be protective of designated uses in State WQS 20.6.4.122 NMAC and applicable numeric criteria in State WQS 20.6.4.900.J (1) NMAC. The calculation of the effluent limitation must use applicable State WQS in 20.6.4.11.B NMAC for critical flow (Wildlife Habitat and Chronic Aquatic Life) and 20.6.4.11.E (2) NMAC at the point of discharge (Acute Aquatic Life). Excerpts for NMWQS citations were provided above. Additional information is provided in Comment 2 below.

COMMENTS THAT ARE NOT CONDITIONS OF CERTIFICATION

Comment 1 (Clarification on Reasonable Potential in Fact Sheet)

USEPA Fact Sheet prepared June 13, 2017 included an analysis showing that Aldrin had a reasonable potential (RP) to exceed state WQS. However, USEPA Fact Sheet Page 12 of 17 states “EPA was unable to determine if RP for Aldrin exists and has proposed collection of additional information during the permit term.” NMED concurs that USEPA’s use of Aldrin data in the RP may not be representative and that an effluent limitation for Aldrin is not required in the permit. NMED agrees that further monitoring for Aldrin appears warranted.

Comment 2 (NMDG&F Comment on Cover Page and Throughout regarding Facility Name)

NMED requests USEPA to update the Authorization Page and throughout the Final Permit with the correct facility name. “Red River State Fish Hatchery” is the correct name according to NMDG&F.

Comment 3 (Part I.A Clarify Authorized Discharge)

NMED requests USEPA to clarify the authorized discharge description in Part I.A.1 and Part I.A.2 of the Final Permit. The Draft Permit states “authorized to discharge treated wastewater” and “authorized to discharge wastewater” in Part I.A.1 and Part I.A.2 of Draft Permit, respectively. NMED recommends that the discharge be described as “hatchery wastewater” which is consistent with other NPDES permits for hatcheries in the State of New Mexico.

Comment 4 (Conditions 1 and 2, NMDG&F Comment on Part I Section C and Chlorine):

NMDG&F requested that the permit be revised “to allow for occasional discharges of chlorine due to the proposed use of the FDA approved drug Chloramine-T to treat Bacterial Gill Disease (BGD) at the hatchery.” Since the use of the drug is proposed, a representative sample of the discharge was not provided. EPA may not be able to determine that RP exists, but may include limitations based on the Permit Writer’s best professional judgement. USEPA uses equations for calculating water quality based effluent limits for discharges to perennial streams as described in the NMIP. Based on the critical dilution in USEPA’s Fact Sheet, the Acute Aquatic Life Criteria (19 µg/L) should be the limiting effluent limitation concentration.

Comment 5 (Part I.A.1, Footnote #3, pH)

NMED requests that USEPA remove the condition to average pH values in Part I.A.1 Footnote #3 of the Draft Permit. If not removed, then USPA should provide instruction to the Permittee on the calculation in the Final Permit since pH is a logarithmic measure and simple arithmetic average would not be applicable.

For this request, NMED recommends that the pH sample type in Part I.A.1 be changed to “Composite Grab or Grab ^{*2,3}” and the following language be deleted from Footnote 3: “*and then pH value averaged for reporting at Outfall 001*” in the Final Permit.

Comment 6 (NMDG&F Comment on Part I Section B and Aldrin Study)

NMED requests that USEPA clarify monitoring requirements for Aldrin in Part I.A.1 and Footnote 7 of the Final Permit.

Based on Part I.B Aldrin Study Conditions, the Permittee is to submit a detailed plan to test for Aldrin at each source of intake water within six months after the effective date of the permit for EPA and NMED review and approval. Effluent monitoring for Aldrin once/quarter is required in Part I.A.1 starting the 2nd year of the permit. However, depending the Permittee’s detailed plan and results of testing of the source water and effluent, it may not be necessary to monitor the influent to the plant at a frequency of once/quarter thru the permit term.

For this request, NMED recommends Footnote 7 be changed to “If conducting influent testing for Aldrin per Part II.B of this permit, effluent testing shall be conducted at the same time. Effluent testing more frequently than once/quarter is to be reported per Part III.D.5 of this Permit.”

Comment 7 (WET Monitoring Clarification, Part I.A.1)

NMED requests USEPA to clarify Part I.A.1 Footnote 7 regarding Whole Effluent Toxicity (WET) testing in the Final Permit that the sample collection shall occur between April 1 and June 30 during times of raceway, trough or tank cleaning if possible.” WET monitoring during periods of potentially higher pollutant concentrations from cleaning operations is consistent with other NPDES permits for hatcheries in the State of New Mexico.

Comment 8 (WET Monitoring, Part II.B)

NMED requests USEPA to provide the Permittee with additional information in Part II.B.1.d of the Final Permit should a failure of a Whole Effluent Toxicity (WET) test occurs at the end of the paragraph as follows “USEPA will inform the Permittee if additional information, testing, TRE, and/or reporting is required.”

Comment 9 (Standard Conditions, Part III)

NMED requests that USEPA update Part III Standard Conditions of the Final Permit with the latest amendment approved by Region 6. NMED received e-mail correspondence with updated language for Part III Amended September 2017.